

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LOWANA SHANELL DUMAS,

Plaintiff,

v.

Case No. 10-12661

HURLEY MEDICAL CENTER, et al.,

Defendants.

**ORDER TERMINATING AS MOOT DEFENDANT CITY OF FLINT'S
MOTION FOR SUMMARY JUDGMENT AND DIRECTING CITY OF
FLINT TO FILE RESPONSIVE PLEADING**

On February 14, 2012, the court conducted a telephone conference with counsel, during which the parties agreed to permit Plaintiff Lowana Dumas to file a third amended complaint. Plaintiff filed the amended complaint on February 22, 2012. During the conference, the court also directed Plaintiff to file a response to Defendant City of Flint's pending motion for summary judgment by April 14, 2012, granting Plaintiff approximately sixty days to conduct additional discovery. In reviewing Defendant City of Flint's motion, the court has determined that the motion is moot because it was filed before Plaintiff filed her third amended complaint and seeks dismissal of the claims asserted in the second amended complaint. See *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000) (holding that an amended complaint supersedes the original complaint and becomes the legally operative complaint); *Ky. Press Ass'n, Inc. v. Kentucky*, 355 F. Supp. 2d 853, 857 (E.D. Ky. 2005) ("Plaintiff's amended complaint supercedes the original complaint, thus making the motion to dismiss the original

complaint moot."); *Scuba v. Wilkinson*, No. 1:06CV160, 2006 WL 2794939, at *2 (S.D. Ohio Sept. 27, 2006) ("Since the amended complaint replaces the original complaint, the motions to dismiss the original complaint are moot."). Unfortunately, neither the court nor counsel for the parties identified this procedural issue during the February telephone conference. Moreover, presumably under the reasonable belief that its pending motion for summary judgment did not require the filing of an answer to Plaintiff's third amended complaint, Defendant City of Flint has not filed a responsive pleading as required under Federal Rule of Civil Procedure 12. To address these issues, the court will terminate as moot Defendant City of Flint's motion and direct it to file a responsive pleading in accordance with Rule 12. Accordingly,

IT IS ORDERED that Defendant City of Flint's motion for summary judgment [Dkt. # 126] is TERMINATED AS MOOT.

IT IS FURTHER ORDERED that Defendant City of Flint is DIRECTED to file a responsive pleading pursuant to Rule 12 on or before **April 19, 2012**. In lieu of filing an answer to the complaint, Defendant City of Flint may refile a dispositive motion, this time addressed to the third amended complaint.

IT IS FURTHER ORDERED that, in the event that Defendant City of Flint renews its dispositive motion, Plaintiff Lowana Dumas is DIRECTED to file a response on or before **April 26, 2012**. Any reply shall be filed by **May 10, 2012**.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: April 12, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 12, 2012, by electronic and/or ordinary mail.

s/Lisa G. Wagner

Case Manager and Deputy Clerk
(313) 234-5522